STARBUCKS	LESSBUCKS[47]
SUNVIS	UNIVIS[48]
TITAN	VANTAGE TITAN[49]
TOYS "R" US	KIDS "r" US[50]
TURANZA	MILANZA[51]
UNCLE BEN's	BEN's BREAD[52]
VIAGRA	TRIAGRA[53]

§ 23:57 Examples of marks similar in part—No likelihood of confusion

The following are examples of cases where it was held that there was no likelihood of confusion between marks which were similar in part:

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[47]Starbucks U.S. Brands, LLC and Starbucks Corporation D.B.A. Starbucks Coffee Company v. Marshall S. Ruben, 78 U.S.P.Q.2d 1741, 2006 WL 402564 (T.T.A.B. 2006) (both for retail coffee shops).

[48]Esso Standard Oil Co. v. Sun Oil Co., 229 F.2d 37, 108 U.S.P.Q. 161 (D.C. Cir. 1956), cert. denied, 351 U.S. 973, 100 L. Ed. 1491, 76 S. Ct. 1027, 109 U.S.P.Q. 517 (1956).

[49]In re Toshiba Medical Systems Corporation, 91 U.S.P.Q.2d 1266, 2009 WL 1745898 (T.T.A.B. 2009).

[50]Toys "R" Us, Inc. v. Canarsie Kiddie Shop, Inc., 559 F. Supp. 1189, 217 U.S.P.Q. 1137 (E.D.N.Y. 1983) (both for childrens' goods; likelihood of confusion found). *See* Toys "R" Us, Inc. v. Lamps R Us, 219 U.S.P.Q. 340, 1983 WL 50152 (T.T.A.B. 1983) (LAMPS R US for lamps found confusingly similar to TOYS "R" US for retail toy store services).

[51]Bridgestone Americas Tire Operations, LLC v. Federal Corp., 673 F.3d 1330, 102 U.S.P.Q.2d 1061 (Fed. Cir. 2012) (Likelihood of confusion found between opposer's TURANZA and POTENZA marks for tires and applicant's MILANZA for tires.).

[52]Uncle Ben's, Inc. v. Stubenberg Int'l, Inc., 47 U.S.P.Q.2d 1310, 1998 WL 416760 (T.T.A.B. 1998) (confusion likely between UNCLE BEN's for rice and other food products and junior user's BEN's BREAD bread mix).

[53]Pfizer, Inc. v. Y2K Shipping & Trading, Inc., 70 U.S.P.Q.2d 1592, 2004 WL 896952 (E.D. N.Y. 2004) (both products for erectile dysfunction: summary judgment of infringement was found).

ACCUTRON	UNITRON[1]
ALL	ALL CLEAR[2]
ALTIRA	ALTRIA[3]
AUTOZONE	POWERZONE[4]
AUTOZONE	OIL ZONE[5]
BAD AIR SPONGE	ENVIRONMENTAL AIR SPONGE[6]
BANK IN A BILLFOLD	BANK IN A WALLET[7]
BOSTON TEA PARTY	BOSTON SEA PARTY[8]
BOWFLEX	BODY FLEX[9]

[Section 23:57]

[1]Bulova Watch Co. v. Miller, 463 F.2d 1376, 175 U.S.P.Q. 38 (C.C.P.A. 1972).

[2]Lever Bros. Co. v. Barcolene Co., 463 F.2d 1107, 174 U.S.P.Q. 392 (C.C.P.A. 1972).

[3]Altira Group LLC v. Philip Morris Companies Inc., 207 F. Supp. 2d 1193, 63 U.S.P.Q.2d 1438 (D. Colo. 2002) (preliminary injunction denied).

[4]AutoZone, Inc. v. Tandy Corp., 373 F.3d 786, 71 U.S.P.Q.2d 1385, 2004 FED App. 0200P (6th Cir. 2004) (AUTOZONE for retailer of auto products versus POWERZONE for retail sale of electronic items sold in RADIO SHACK stores. Summary dismissal was affirmed.).

[5]Autozone, Inc. v. Strick, 95 U.S.P.Q.2d 1790, 2010 WL 883850 (N.D. Ill. 2010) (AUTOZONE for retailer of auto products versus OIL ZONE for oil change services and WASH ZONE for auto wash; dismissed after court trial.). *Compare*: AutoZone Parts, Inc. v. Dent Zone Companies, Inc., 100 U.S.P.Q.2d 1356, 2011 WL 4090452 (T.T.A.B. 2011) (Registration for DENT ZONE for vehicle repair outlets was cancelled as being in conflict with petitioner's AUTOZONE for auto parts stores.).

[6]Mateson Chemical Corp. v. Vernon, 54 U.S.P.Q.2d 1880, 2000 WL 680020 (E.D. Pa. 2000).

[7]Omaha Nat'l Bank v. Citibank (South Dakota), N.A., 633 F. Supp. 231, 229 U.S.P.Q. 51 (D. Neb. 1986) (both for credit card services).

[8]Jacobs v. International Multifoods Corp., 668 F.2d 1234, 212 U.S.P.Q. 641 (C.C.P.A. 1982).

[9]Nautilus Group, Inc. v. Savvier, Inc., 427 F. Supp. 2d 990, 79 U.S.P.Q.2d 1850 (W.D. Wash. 2006) (There is a crowded market of marks in the exercise industry using the word "flex." No likelihood of confusion between senior BOWFLEX exercise machines and junior BODY FLEX exercise bar.).

B.V.D.	B.A.D.[10]
CAREFIRST	FIRST CARE[11]
CAREFIRST	FIRSTCAROLINACARE[12]
CARTAGIO	ON FOLIO[13]
CHAIRWORKS	CHAIRMAN[14]
CHLORAPREP	CHLORASCRUB[15]
COCA-COLA	THE UNCOLA[16]
CORONAS	MEZZACORONA[17]

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[10]B.V.D. Licensing Corp. v. Body Action Design, Inc., 846 F.2d 727, 6 U.S.P.Q.2d 1719 (Fed. Cir. 1988) (both for clothing; consumers will likely react to the junior user's mark as the common word "bad," not as a simulation or suggestion of the well-known mark B.V.D.).

[11]Carefirst of Maryland, Inc. v. First Care, P.C., 350 F. Supp. 2d 714, 73 U.S.P.Q.2d 1833 (E.D. Va. 2004), aff'd CareFirst of Maryland, Inc. v. First Care, P.C., 434 F.3d 263, 77 U.S.P.Q.2d 1577 (4th Cir. 2006) (Summary judgment of no likelihood of confusion between senior CAREFIRST for health insurance versus junior FIRST CARE for physicians' group medical office.).

[12]In re Carefirst of Maryland, Inc. Firsthealth of the Carolinas, Inc., 77 U.S.P.Q.2d 1492, 1504, 2005 WL 2451671 (T.T.A.B. 2005), appeal dismissed, 171 Fed. Appx. 838 (Fed. Cir. 2006) (no confusion likely between senior CAREFIRST and junior FIRSTCAROLINA CARE for competitive heath care plans).

[13]Missiontrek Ltd. Co. v. Onfolio, Inc., 80 U.S.P.Q.2d 1381, 2005 WL 3395187 (T.T.A.B. 2005), aff'd, 208 Fed. Appx. 858 (Fed. Cir. 2006) (nonprecedential) (summary judgment of no likelihood of confusion).

[14]Chairworks Taiwan, Ltd. v. Bannister, 13 U.S.P.Q.2d 2070, 1989 WL 205730 (M.D.N.C. 1989) (both for chairs; preliminary injunction denied).

[15]Medi-Flex, Inc. v. Nice-Pak Products, Inc., 422 F. Supp. 2d 1242, 82 U.S.P.Q.2d 1722 (D. Kan. 2006) (both for an antimicrobial solution used by medical professionals: preliminary injunction denied).

[16]Coca-Cola Co. v. Seven-Up Co., 178 U.S.P.Q. 309, 1973 WL 19935 (T.T.A.B. 1973), aff'd, 497 F.2d 1351, 182 U.S.P.Q. 207 (C.C.P.A. 1974). *See also* Seven-Up Co. v. No-Cal Corp., 191 U.S.P.Q. 202, 1976 WL 21005 (E.D.N.Y. 1976) (use of term "Unsugar" not infringement).

[17]Miguel Torres S.A. v. Cantine Mezzacorona S.C.A.R.L., 52 U.S.P.Q.2d 1557, 1999 WL 1040107 (E.D. Va. 1999), vacated and remanded, 108 Fed. Appx. 816 (4th Cir. 2004) (both marks used on wine, but of different types).

CREAM OF WHEAT	CREAMY WHEAT[18]
DIGIRAY	DIGIRAD[19]
EXXON	EXXELLO[20]
FIBEROD	FINALROD[21]
FLIP	FINAL FLIP[22]
FRIAR JOHN	LONG JOHN[23]
FRUIT OF THE LOOM	FRUIT OF THE EARTH[24]
HARLEM WIZARDS	WASHINGTON WIZARDS[25]

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[18]Nabisco Brands, Inc. v. Quaker Oats Co., 547 F. Supp. 692, 216 U.S.P.Q. 770 (D.N.J. 1982) (both for breakfast cereals; defendant used the word "creamy" in a descriptive sense to denote a soft and smooth product; preliminary injunction denied).

[19]In re Digirad Corp., 45 U.S.P.Q.2d 1841, 1998 WL 104305 (T.T.A.B. 1998) (no likelihood of confusion between DIGIRAY for electronic X-ray system and DIGIRAD for radiation sensors, because "DIGI" is commonly used for digital equipment and knowledgeable buyers will be very aware of the different connotation of RAY (for X-ray) and RAD (a measure of radiation)).

[20]Exxon Corp. v. National Foodline Corp., 579 F.2d 1244, 198 U.S.P.Q. 407 (C.C.P.A. 1978) (summary judgment against opposer's petition affirmed; record failed to show likelihood of confusion between EXXON gas stations and applicant's ice cream making machine).

[21]John Crane Production Solutions, Inc. v. R2R and D, LLC, 861 F. Supp. 2d 792 (N.D. Tex. 2012) (Preliminary injunction denied where devices were used in the production of oil and sold to sophisticated buyers.), later developments in John Crane Production Solutions, Inc. v. R2R and D, LLC, 2012 WL 1571080 (N.D. Tex. 2012) (Denying Rule 12(b)(6) motion to dismiss and finding plaintiff pled a plausible likelihood of confusion.).

[22]Bell Laboratories, Inc. v. Colonial Products, Inc., 644 F. Supp. 542, 231 U.S.P.Q. 569 (S.D. Fla. 1986) (both for rodenticide; denial of preliminary injunction).

[23]Long John Distilleries, Ltd. v. Sazerac Co., 426 F.2d 1406, 166 U.S.P.Q. 30 (C.C.P.A. 1970).

[24]Fruit of Loom, Inc. v. Fruit of Earth, Inc., 3 U.S.P.Q.2d 1531, 1987 WL 124290 (T.T.A.B. 1987) (the former for clothing, the latter for personal care products such as shampoo; Trademark Board said that the marks connote a different meaning).

[25]Harlem Wizards Entertainment Basketball, Inc. v. NBA Properties Inc., 952 F. Supp. 1084 (D.N.J. 1997) (court found existence of no likelihood of reverse confusion that would injure the senior user HARLEM WIZARDS mark for a show basketball team when the Washington NBA team changed its name to WASHINGTON WIZARDS).

JET	AEROB-A-JET[26]
KEDS	KINNEY KIDS[27]
KOA	A-OK[28]
LEAN CUISINE	LEAN 'N TASTY[29]
LITTLE CAESARS	PIZZA CAESAR USA[30]
MAGNIVISION	MAGNA • DOT[31]
MARSHALL FIELD'S	MRS. FIELDS[32]
MIRACLE WHIP	YOGOWHIP[33]
MISS U.S.A.	MISS ASIA U.S.A.[34]
MISS WORLD	MRS. OF THE WORLD[35]

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[26]Jet, Inc. v. Sewage Aeration Systems, 165 F.3d 419, 49 U.S.P.Q.2d 1355, 1999 FED App. 3P (6th Cir. 1999), reh'g and suggestion for reh'g en banc denied, (Feb. 25, 1999), reh'g and reh'g en banc denied, (Sept. 28, 2000) (both for sewage and waste-water treatment systems for homes).

[27]Uniroyal, Inc. v. Kinney Shoe Corp., 453 F. Supp. 1352, 202 U.S.P.Q. 273 (S.D.N.Y. 1978).

[28]Kampgrounds of America, Inc. v. North Delaware A-OK Campground, Inc., 415 F. Supp. 1288, 190 U.S.P.Q. 437 (D. Del. 1976), aff'd without op., 556 F.2d 566 (3d Cir. 1977).

[29]Luigino's, Inc. v. Stouffer Corp., 170 F.3d 827, 50 U.S.P.Q.2d 1047 (8th Cir. 1999) ("The use of identical dominant words does not automatically mean that two marks are similar, however.").

[30]Little Caesar Enterprises, Inc. v. Pizza Caesar, Inc., 834 F.2d 568, 4 U.S.P.Q.2d 1942 (6th Cir. 1987) (both for pizza restaurants).

[31]Al-Site Corp. v. VSI Intern., Inc., 174 F.3d 1308, 50 U.S.P.Q.2d 1161 (Fed. Cir. 1999), reh'g denied,, in banc suggestion declined, (May 25, 1999) (both for eyeglass display racks).

[32]Marshall Field & Co. v. Mrs. Field's Cookies, 25 U.S.P.Q.2d 1321, 1992 WL 421449 (T.T.A.B. 1992) ("It is because both marks are famous that we believe the public will easily recognize the differences in the marks and distinguish between them.").

[33]Henri's Food Products Co. v. Kraft, Inc., 717 F.2d 352, 220 U.S.P.Q. 386 (7th Cir. 1983).

[34]Miss Universe, L.P., LLLP v. Villegas, 672 F. Supp. 2d 575, 93 U.S.P.Q.2d 1652 (S.D. N.Y. 2009) (No likelihood of confusion in MISS U.S.A. versus MISS ASIA U.S.A., both for beauty pageants).

[35]Miss World (UK), Ltd. v. Mrs. America Pageants, Inc., 856 F.2d 1445, 8 U.S.P.Q.2d 1237 (9th Cir. 1988) (both for beauty pageants, court noting that this was a "crowded" trademark market; denial of preliminary injunction).

NUTRI/SYSTEM	NUTRI-TRIM[36]
PARENTS	PARENTS DIGEST[37]
PECAN SANDIES	PECAN SHORTEES[38]
PENNZOIL	GREENOIL[39]
ROMAN	ROMANBURGER[40]
SENSIENT FLAVORS	SENSORY FLAVORS[41]
SEVEN UP	SHAPE UP[42]
SOLENA	CASA SOLANA[43]
STREETWISE	STREET-SMART[44]
SUBARU	SUPRA[45]
SWATCH	T-WATCH[46]

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[36]Nutri/System, Inc. v. Con-Stan Industries, Inc., 809 F.2d 601, 1 U.S.P.Q.2d 1809 (9th Cir. 1987) (both for weight loss services).

[37]Gruner + Jahr USA Publishing v. Meredith Corp., 991 F.2d 1072, 26 U.S.P.Q.2d 1583 (2d Cir. 1993).

[38]Keebler Co. v. Murray Bakery Products, 866 F.2d 1386, 9 U.S.P.Q.2d 1736 (Fed. Cir. 1989) (both for pecan cookies; summary judgment of dismissal granted).

[39]Pennzoil Co. v. Crown Cent. Petroleum Corp., 140 F.2d 387, 60 U.S.P.Q. 320 (4th Cir. 1944), cert. denied, 322 U.S. 750, 88 L. Ed. 1581, 64 S. Ct. 1261, 61 U.S.P.Q. 543 (1944).

[40]Mr. Hero Sandwich Systems, Inc. v. Roman Meal Co., 781 F.2d 884, 228 U.S.P.Q. 364 (Fed. Cir. 1986) (both for food products).

[41]Sensient Technologies Corp. v. SensoryEffects Flavor Co., 613 F.3d 754, 96 U.S.P.Q.2d 1164 (8th Cir. 2010), cert. denied, 131 S. Ct. 1603, 179 L. Ed. 2d 500 (2011) (summary dismissal affirmed).

[42]Seven-Up Co. v. No-Cal Corp., 191 U.S.P.Q. 202, 1976 WL 21005 (E.D.N.Y. 1976).

[43]La Mexicana, Inc. v. Sysco Corp., 49 U.S.P.Q.2d 1204, 1998 WL 929629 (W.D. Wash. 1998) (both for tortillas: "[T]he marks as they appear in the marketplace are too different to result in confusion").

[44]Streetwise Maps, Inc. v. Vandam, Inc., 159 F.3d 739, 48 U.S.P.Q.2d 1503 (2d Cir. 1998) (both marks used on maps).

[45]Fuji Jyukogyo Kabushiki Kaisha v. Toyota Jidosha Kabushiki Kaisha, 228 U.S.P.Q. 672, 1985 WL 71979 (T.T.A.B. 1985) (both for automobiles; noting that SUPRA connotes "superiority").

[46]Swatch Watch, S.A. v. Taxor, Inc., 785 F.2d 956, 229 U.S.P.Q. 391 (11th Cir. 1986) (both for watches; denial of preliminary injunction affirmed).

SWATCH	IWATCH[47]
SWATCH	SWAP[48]
SYNCROMATIC	OIL-O-MATIC[49]
SYROCOL	CHERACOL[50]
TEEN	TEEN PEOPLE[51]
TETON GLACIER	GLACIER BAY[52]
THE SPORTS AUTHORITY	THE PERSONAL COMPUTER AUTHORITY[53]
TIC TAC TOE	TIC TAC[54]
VARGAS	VARGA GIRL[55]

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[47]Swatch AG (Swatch SA) (Swatch Ltd.) v. M. Z. Berger & Co., Inc., 108 U.S.P.Q.2d 1463, 1470, 2013 WL 5655834 (T.T.A.B. 2013), appeal dismissed in part, 559 Fed. Appx. 1009 (Fed. Cir. 2014), aff'd on other grounds aff'd 787 F.3d 1368, 114 U.S.P.Q. 2d 1892 (Fed. Cir. 2015) (both for watches: the similar generic "watch" portion "is not a sufficient basis for finding likelihood of confusion.").

[48]Swatch AG v. Beehive Wholesale, LLC, 739 F.3d 150, 155, 109 U.S.P.Q.2d 1291 (4th Cir. 2014) (Both for watches, the defendant's SWAP used for watches with interchangeable parts.).

[49]Syncromatic Corp. v. Eureka Williams Corp., 174 F.2d 649, 81 U.S.P.Q. 434 (7th Cir. 1949), cert. denied, 338 U.S. 829, 94 L. Ed. 504, 70 S. Ct. 79, 83 U.S.P.Q. 543 (1949).

[50]Upjohn Co. v. Schwartz, 246 F.2d 254, 114 U.S.P.Q. 53 (2d Cir. 1957).

[51]Time, Inc. v. Petersen Pub. Co. L.L.C., 173 F.3d 113, 50 U.S.P.Q.2d 1474 (2d Cir. 1999) (both for magazines aimed at teenagers, the junior user being the publisher of PEOPLE magazine).

[52]National Distillers Products Co., LLC v. Refreshment Brands, Inc., 198 F. Supp. 2d 474 (S.D. N.Y. 2002) (for different types of alcoholic beverages).

[53]Sports Authority Michigan Inc. v. PC Authority Inc., 63 U.S.P.Q.2d 1782, 2002 WL 31039597 (TTAB 2002), appeal dismissed, 46 Fed. Appx. 962 (Fed. Cir. 2002) (No likely confusion found between opposer's THE SPORTS AUTHORITY for sporting goods store and applicant's THE PERSONAL COMPUTER AUTHORITY for computer servicing.).

[54]In re Ferrero, 479 F.2d 1395, 178 U.S.P.Q. 167 (C.C.P.A. 1973).

[55]In re Hearst Corp., 982 F.2d 493, 25 U.S.P.Q.2d 1238 (Fed. Cir. 1992) (both for calendars with pictures by the artist Alberto Vargas; "When GIRL is given fair weight, along with VARGA, confusion with VARGAS becomes less likely.").

VOGUE	COUNTRY VOGUES[56]
WHEATIES	OATIES[57]

§ 23:58 Recreating the marketplace in the courtroom—Looking at conflicting marks from the ordinary buyer's point of view

Try to Mirror the Market Place. To arrive at a realistic evaluation of the likelihood of buyer confusion, the court must attempt to recreate the conditions under which prospective purchasers make their choices.[1] A court should not indulge in a prolonged and minute comparison of the conflicting marks in the peace and quiet of judicial chambers, for this is not the context in which purchasers are faced with the marks.[2] As the Second Circuit observed: "[T]he Lanham Act requires a court to analyze the similarity of the products

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[56]Conde Nast Publications, Inc. v. Miss Quality, Inc., 507 F.2d 1404, 184 U.S.P.Q. 422 (C.C.P.A. 1975) (noting that applicant dress manufacturer used "Vogue" in the descriptive sense, so no likelihood of confusion with VOGUE magazine).

[57]Quaker Oats Co. v. General Mills, Inc., 134 F.2d 429, 56 U.S.P.Q. 400 (7th Cir. 1943).

[Section 23:58]

[1]Quaker Oats Co. v. General Mills, Inc., 134 F.2d 429, 56 U.S.P.Q. 400 (7th Cir. 1943); G. D. Searle & Co. v. Chas. Pfizer & Co., 265 F.2d 385, 121 U.S.P.Q. 74 (7th Cir. 1959), cert. denied, 361 U.S. 819, 4 L. Ed. 2d 65, 80 S. Ct. 64, 123 U.S.P.Q. 590 (1959); Avon Shoe Co. v. David Crystal, Inc., 171 F. Supp. 293, 121 U.S.P.Q. 397 (D.N.Y. 1959), aff'd, 279 F.2d 607, 125 U.S.P.Q. 607 (2d Cir. 1960), cert. denied, 364 U.S. 909, 5 L. Ed. 2d 224, 81 S. Ct. 271, 127 U.S.P.Q. 555 (1960); Lever Bros. Co. v. Winzer Co. of Dallas, 326 F.2d 817, 140 U.S.P.Q. 247 (C.C.P.A. 1964); Sun-Maid Raisin Growers v. Sunaid Food Products, Inc., 356 F.2d 467, 149 U.S.P.Q. 238 (5th Cir. 1966); Upjohn Co. v. Universal Wholesale Corp., 161 U.S.P.Q. 558, 1969 WL 9069 (T.T.A.B. 1969).

[2]*See* Quaker Oats Co. v. General Mills, Inc., 134 F.2d 429, 56 U.S.P.Q. 400 (7th Cir. 1943) ("Purchases of merchandise are not made in a vacuum with Professor Quiz in charge."); A. S. Beck Shoe Corp. v. Brenner, 299 F. Supp. 1362, 161 U.S.P.Q. 815 (D.D.C. 1969); Daddy's Junky Music Stores, Inc. v. Big Daddy's Family Music Ctr., 109 F.3d 275, 42 U.S.P.Q.2d 1173 (6th Cir. 1997) (comparison should be made as the consumer in the market sees the marks, not side-by-side in the courtroom); discussion at § 23:41.

See Restatement Third, Unfair Competition § 21, comment c (1995) ("[A]ny comparison should thus be based on the marks as they appear in